

REMARKS

Claims 1 and 2 are pending in the case. Claims 1 and 2 currently stand rejected. The examiner's rejections are respectfully traversed, and reconsideration of the same is requested.

Amendments

Applicant has amended Claim 1 to clarify that the transfilling station is contained in the footprint of a mobile vehicle. No change to the scope of the claims is intended by this amendment, and support therefor is found in Paragraph 28 of the specification.

Claim Rejections – 35 USC § 102

The examiner rejected Claims 1 and 2 as being anticipated by Hermeling.¹ In rejecting Claims 1 and 2, the examiner stated that Hermeling discloses a mobile filling plant for filling compressed gas bottles (6) on-site with oxygen² comprising: transporting a transfilling station (2) to a desired transfilling site.³

A claim is anticipated only if each and every limitation as taught in the claim is found in the prior art reference.⁴ As explained in paragraph 13, Hermeling utilizes two separate components, a filling station 2 and a reservoir 3 which holds the gas from the containers.⁵ Applicant's method includes a single transfilling station wherein the transfilling station which also holds the evacuated gas from the gas containers.⁶ Specifically, Applicant's method utilizes a transfilling station which occupies the

¹ EP1167860

² See Hermeling paragraph 5, line 1; Fig. 1, 2.

³ See Hermeling: Station 2 and reservoir 3 are transported by vehicle 1 and trailer 4 and paragraph 6.

⁴ MPEP § 2131.

⁵ See also Hermeling Figs. 1-4.

⁶ Applicant's Claim 1.

footprint of a single mobile trailer or vehicle.⁷ Hermeling does not disclose a transfilling station *which also holds the evacuated gas from the gas containers*; therefore, Hermeling does not disclose each and every limitation of Applicant's Claim 1. Thus, Hermeling does not anticipate Applicant's Claim 1, and Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

Additionally, Applicant's Claim 1 requires the step of inspecting the canisters in conjunction with the evacuation thereof. Applicant specifically discloses that

“canisters 101 are inspected in order to determine their suitability for refilling. As canisters 101 have a finite life, and given the high pressure of the gases within, they must be assured of their fitness to continue in service, which is the function this inspection serves.”⁸

However, Hermeling does not disclose the step of inspecting the canisters in conjunction with evacuation. Again, a claim is anticipated only if each and every limitation as taught in the claim is found in the prior art reference.⁹ Thus, Hermeling does not anticipate Applicant's Claim 1 because Hermeling does not disclose each and every element of Claim 1. Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

Claim 2 depends from independent Claim 1. A dependent claim shall be construed to incorporate by reference every limitation of the independent claim to which it refers.¹⁰ Therefore, Claim 2 includes the limitations of Claim 1, including a transfilling station which also holds the evacuated gas from the gas containers. As stated above, Hermeling does not disclose a transfilling station which also holds the excavated gas from gas containers. Thus, Hermeling does not anticipate Claim 2 because the reference does not disclose each and every element of those claims as required by MPEP § 2131,

⁷ See Applicant's paragraph 28.

⁸ See Applicant's paragraph 36.

⁹ MPEP § 2131.

¹⁰ 35 USC § 112.

and Applicant respectfully requests that the rejection of Claim 2 under 35 USC § 102(b) be withdrawn.

Claim Rejections – 35 USC § 103

The examiner rejected Claims 1 and 2 as being unpatentable over Mattiola¹¹ in view of Hermeling.¹² The examiner also rejected Claims 1 and 2 as being unpatentable over Mattiola¹³ in view of Niedwiecki et al.¹⁴ In making both of the above rejections, the examiner stated that Mattiola disclosed a system for inspecting, evacuating, vaporizing and compressing a gas such as oxygen into gas cylinders; the examiner referenced Mattiola at Column 4, line 5 to Column 6, line 20. However, a review of the referenced section reveals no disclosure of an inspection of the canisters to ensure that they are suitable for refilling.¹⁵

The key to supporting any rejection under 35 U.S.C. § 103 is a clear articulation of the reasons why the claimed invention would have been obvious.¹⁶ In making an obviousness rejection, an examiner must also consider all words in a claim when judging the patentability of that claim against the prior art.¹⁷ The above mandate stems from the basic steps in making a factual determination of obviousness: determining the scope and content of the prior art, ascertaining the differences between the claimed invention and the prior art, and the level of ordinary skill in the art.¹⁸ Thus, an examiner's prima facie case of obviousness should be a clearly articulated argument built on the basic framework of *Graham*.

¹¹ US 4,881,375.

¹² EP 1,167,860.

¹³ US 4,881,375.

¹⁴ US 6,755,225.

¹⁵ See Applicant's paragraph 36.

¹⁶ MPEP § 2143.

¹⁷ MPEP § 2143.03.

¹⁸ *Graham v. John Deere*, 383 U.S. 1 (1966).

In the present matter, Applicant's Claim 1 requires the limitation of "inspecting and evaporating said canisters." As stated above, Mattiola does not disclose the step of inspecting the canisters in order to determine their suitability for refilling. Thus, applicant respectfully suggests that the examiner has not met the burden of showing a prima facie case of obviousness because the first requirement of the Graham, determining the scope and content of the prior art, has not been properly done. Accordingly, Applicant respectfully requests that the examiner's rejection of Applicant's Claims 1 and 2 be withdrawn.

CONCLUSION

In view of the above, applicant respectfully submits the Claims 1 and 2 are neither anticipated under 35 U.S.C. § 102(b) nor obvious under 35 U.S.C. § 103. Applicant respectfully requests that the above rejections be withdrawn and that Claims 1 and 2 pass to allowance.

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